

VIRGINIA:

BEFORE THE BOARD OF PHARMACY

IN RE: ECKERD CORPORATION
a/k/a Eckerd Drug Company

CONSENT ORDER

Pursuant to §§ 9-6.14:11 and 54.1-2400(8) of the Code of Virginia, an Informal Conference Committee ("Committee") of the Virginia Board of Pharmacy ("Board"), composed of Conway F. Stanley, Pharmacist; Sonny Currin, Jr., Pharmacist; and Luella A. Lightfoot, met regarding 113 pending pharmacy permit applications for Eckerd Corporation ("Eckerd") on August 6, 1997 in Henrico County, Virginia. Robert W. Hannan, Vice Chairman; Deborah J. Simmons, Pharmacist, Director of Pharmacy Development; and Jay Roten, Pharmacist, Regional Vice President, were present on behalf of Eckerd, and Peter M. Mellette, Esquire, was present as counsel to Eckerd. The purpose of the informal conference was to review Eckerd's 113 applications for permits to conduct pharmacies in the Commonwealth of Virginia and to review evidence that Eckerd may be in violation of the laws and regulations governing the practice of pharmacy as more fully set forth in the Notice of Informal Conference dated July 30, 1997.

FINDINGS OF FACT

After consideration of the evidence and statements concerning the allegations, the Committee makes the following findings of fact:

1. CVS Corporation ("CVS"), based in Woonsocket, Rhode Island, operates nearly 2,600 stores in 17 Midwestern, Southeastern and Eastern states. Revco D.S., Inc. ("Revco"), based in Twinsburg, Ohio, operates more than 1,400 stores in 14 states and the District of Columbia. The two companies announced the proposed merger in February 1997. It would create the nation's largest drug store company by number of stores, and the second largest in terms of sales. According to the Federal Trade Commission ("FTC") complaint detailing the alleged antitrust law violations in this case, the CVS/Revco merger gave the combined entity

a dominant position in the Commonwealth of Virginia. CVS agreed with the FTC to divest a total of 114 Revco stores in Virginia. Under the settlement, CVS agreed to divest 114 Revco stores to Eckerd Corporation ("Eckerd"), a subsidiary of J. C. Penney Company. The proposed consent agreement that the FTC negotiated to resolve these charges would replace the lost competition resulting from the merger by requiring CVS to sell enough drug stores to maintain competition. All assets of the 114 Revco drug stores had to be sold within four months after the Commission's initial acceptance of the consent agreement for public comment. The stores to be divested were primarily in the areas of Norfolk/Virginia Beach/Newport News, Richmond-Petersburg, and Charlottesville.

2. As of May 16, 1997, Eckerd Corporation ("Eckerd") agreed to purchase from CVS Corporation ("CVS") approximately 113 Revco Drug Stores located in Virginia (Attachment #1). On or about May 29, 1997, CVS merged with Revco Drug Stores, Inc. ("Revco"), and purchased approximately 237 Revco stores. Between June 17, 1997 and June 22, 1997, Eckerd purchased 113 Revco stores from CVS, and began the business of operating these pharmacies in Virginia. On June 4, 1997, the Board of Pharmacy received a letter from CVS stating that a merger with Revco had taken place May 19, 1997, and that applications for change of ownership would be forthcoming. The letter also stated that beginning June 17, 1997, 113 stores would be sold to Eckerd Corporation. On Monday June 23, 1997, the Board office started receiving complaints from the public concerning the Eckerd takeover of Revco and the fact that patients were not able to get prescriptions refilled because Eckerd no longer had the Revco computer system or the dispensing records previously maintained by Revco in an approved record system format. As of the dates of sale of each store, each Eckerd store retained all hard copy prescriptions, which contained only original dispensing information with no refill information. CVS initially gave Eckerd only four months of dispensing records on microfiche. As of June 23, 1997, the Board had still not received applications for pharmacy permits due to change of ownership from CVS

for the original transfer from Revco of the approximately 237 stores and had not received applications for pharmacy permits due to change of ownership from Eckerd for the subsequent transfer of the 113 stores from CVS/Revco. On Tuesday, June 24, 1997, the Executive Director of the Board informed both CVS and Eckerd that the Board had received no applications for pharmacy permits subsequent to change in ownership as required by statute and that they were operating pharmacies without holding a permit from the Board. Both CVS and Eckerd stated that applications would be submitted no later than Friday, June 27, 1997. On that same day, the Executive Director informed both Eckerd and CVS by telephone that the problem with Eckerd not having required records needed to be resolved immediately in order that patients could get their prescriptions properly filled in accordance with law and regulation. The Board office was informed by CVS that CVS would not give back to Eckerd the Revco computer system which had been removed from the pharmacies immediately prior to the Eckerd takeover. The Board office was also informed that it would take approximately two weeks for CVS to provide the additional information on microfiche to give Eckerd a two year dispensing history. CVS did agree to set up a system of "partner" pharmacies in which an Eckerd pharmacist could telephone another former Revco pharmacy retained by CVS and obtain a copy of a prescription for those prescription records not included in the four month microfiche. On Wednesday, June 25, 1997, the Board received a letter from CVS outlining their plans for providing Eckerd pharmacies access to records. On Friday afternoon, June 27, 1997, a letter was sent to CVS in response to the June 25th letter, stating that while the efforts of CVS may have helped somewhat in providing a means of access to patient records by Eckerd pharmacists, the effort does not constitute compliance with Virginia law.

3. The Board received Applications for Pharmacy Permit ("application") from Eckerd for the approximate 113 stores as follows:

- a. 95 applications were received on June 25, 1997;
- b. 11 applications were received on July 7, 1997;

- c. 3 applications were received on July 14, 1997; and
- d. 4 applications were received on July 16, 1997.

According to statements to the Committee by Jay Roten, two (2) of the applications received July 16, 1997, one (1) of the applications received July 14, 1997 and one (1) of the applications received July 7, 1997, would have been received by June 25, 1997 had there been a designated pharmacist-in-charge.

4. Eckerd agreed to continue with the purchase of the 113 Revco stores from CVS and began operation with the knowledge that CVS planned to provide Eckerd with prescription dispensing records and patient information, which does not meet the requirements of Virginia law, in that:

- a. At the time of each store's purchase, CVS provided Eckerd with hard copy prescriptions, which contained only original dispensing information with no refill information and the microfiche dispensing records for prescriptions which had only been dispensed within the four months prior to the production of the microfiche.
- b. At the time of each store's purchase, CVS did not provide Eckerd with the prescription dispensing records for the interim days between the date the four months microfiche was produced and the date Eckerd assumed control of each pharmacy.
- c. CVS provided only partial information needed to conduct a prospective drug review. CVS provided a separate microfiche organized by patient name with only the records of drugs dispensed to patients who had received a prescription from Revco during the four months prior to the preparation of the microfiche. The Revco computer system had the capability of assisting the pharmacist in conducting a complete prospective drug review by screening the current prescription against all drugs dispensed to the

individual patient at any pharmacy within the Revco system and against other information submitted to Revco by the patient; i.e., allergies.

- d. Revco had built a volume of prescription business which relied on the automated data processing system for the relatively, in comparison with any manual system, rapid storage and retrieval of records for both prescription dispensing and for prospective drug reviews. Having to manually search two different sets of microfiche to get both dispensing and patient data while trying to maintain that volume and level of service, created an unsafe setting for the practice of pharmacy.

5. Multiple complaints have been received by the Department of Health Professions concerning Eckerd's pharmacy services and the unsafe environment for the practice of pharmacy. Complaints include prescription dispensing errors, prescriptions being lost; failing to dispense prescriptions in a timely manner; dispensing prescriptions with generic drugs when the name brand had been requested; failing to provide customers with timely access to their prescription records; substituting medication dosages from those as prescribed without the physician's authorization; and failing to dispense prescriptions with the prescribed number of dosages.

6. Twenty-eight of the Eckerd pharmacies were inspected by DHP inspectors. At the informal conference, these inspectors and three Eckerd pharmacists made statements to the Committee that the conditions in the prescription departments were chaotic and confusing. Further, the inspection reports indicated the following:

- a. Most of the pharmacies had at least four persons present and one had ten persons present, with an average of five persons in the prescription department, with only one being a licensed pharmacist in Virginia, which resulted in a chaotic setting in which the pharmacist had difficulty in complying with the laws and regulations and had concerns regarding the

control and security of the drug stock. Eckerd provided many of the additional staff, which included persons licensed as pharmacists in other states and technicians, on a temporary basis to assist with clerical and training activities.

- b. Pharmacists stated that they were not always able to check transcribing of information from microfiche and the entering of that information into the Eckerd computer system against either the microfiche or hard copy prescription because of the extent of the backlog of prescriptions to be filled, created by the lack of records in an automated data processing system.
- c. Pharmacists frequently referred patients back to their physician for a new prescription or called the physician for a new prescription, which has generated complaints from physicians who were opposed to writing a new prescription when there already existed a valid prescription with refills and who objected to the additional workload imposed.
- d. Pharmacists from other pharmacies made complaints that Eckerd pharmacists either were not able to give "copies" or were refusing to give copies because of the workload when patients tried to get their prescriptions dispensed elsewhere.
- e. Patients were having to wait long periods of times to get prescriptions filled or refilled and in some cases it was reported that this created a problem with missed dosages of medication.

7. Eckerd representatives stated to the Committee that the pharmacists are still dependent on the microfiche system for refills of Revco prescriptions not yet filled by Eckerd and for any history of Revco dispensing.

8. According to statements to the Committee by inspectors for the Department of Health Professions and pharmacists from Eckerd, conditions at the Eckerd pharmacies have greatly improved.

9. Eckerd submitted a plan to the Committee whereby a computer system would be in place in approximately three and one-half months, which would allow the pharmacists computerized access to a two (2) year history of Revco dispensing data.

CONCLUSIONS OF LAW

The Board concludes that the 113 Eckerd applications for a pharmacy permit (Attachment #1) are properly before the Board and that Findings of Fact #2 through #6 constitute violations of § 54.1-3316(1) and (7), § 54.1-3319(A) and (D), and § 54.1-3434 of the Code of Virginia (1950), as amended, and 18 VAC 110-20-250, 110-20-270, 110-20-320(A)(1) and (C), and 110-20-360 of the Virginia Board of Pharmacy Regulations.

CONSENT

Robert W. Hannan, Vice Chairman, as representative of Eckerd Corporation, by affixing his signature hereon, agrees to the following:

1. He has been advised specifically to seek the advice of counsel prior to signing this document;
2. He is fully aware that without his consent, no legal action can be taken against Eckerd except pursuant to the Virginia Administrative Process Act, § 9-6.14:1 et seq of the Code of Virginia;
3. Eckerd has the following rights, among others:
 - a. the right to a formal fact-finding hearing before the Board;
 - b. the right to representation by counsel; and
 - c. the right to cross-examine witnesses against Eckerd.
4. Eckerd waives all rights to a formal hearing;
5. Eckerd neither admits nor denies the truth of the above Findings of Fact and Conclusions of Law, but agrees to waive its right to contest these in any subsequent proceeding before the Board; and
6. Eckerd consents to the following Order affecting their permits to conduct pharmacies in the Commonwealth of Virginia.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact, Conclusions of Law, and with the consent of the Eckerd Corporation, it is hereby ORDERED that the 113 Eckerd Corporation's applications for permits to conduct pharmacies in the Commonwealth of Virginia be and hereby are APPROVED and that said permits shall be issued on PROBATION subject to the following terms and conditions:

1. The period of probation shall begin on the date that this Consent Order is entered and shall end one year following that date and the terms and conditions imposed by this Consent Order upon the specific 113 permits of Eckerd Corporation to conduct pharmacies shall be removed without any further hearings by the Board unless there is any pending investigation or unresolved allegation of a violation of law or regulation affecting the operation of pharmacies, to include anything directly affecting the practice of pharmacy, or of a violation of a term or condition of this probation. In the event there is any pending investigation or unresolved allegation, the period of probation shall be continued indefinitely or until such time as the Board makes a determination in any such matter in accordance with the Administrative Process Act of the Code of Virginia.

2. Within one (1) year from the date of entry of this Consent Order, Eckerd shall be subject to random, unannounced inspections of not less than twenty (20) of the 113 Eckerd pharmacies referred to in this document by the Board or its designated representatives. Eckerd is solely responsible for the payment of an inspection fee of not more than Four Hundred Dollars (\$400) for each pharmacy which shall be paid to the Board within thirty (30) days of each inspection. If said fee is not received within the prescribed deadline, an additional One Hundred Dollars (\$100) late fee shall be assessed weekly, up to a maximum of One Thousand Dollars (\$1000). Failure to pay the full fee plus the additional assessment within one hundred (100) days of each inspection shall constitute grounds for an administrative proceeding.

3. Eckerd shall be assessed a monetary penalty of Five Hundred Thirty-Seven Thousand Dollars (\$537,000). Eckerd shall pay One Hundred Thousand Dollars (\$100,000) of the penalty to the Board within twenty (20) days from the entry of this Consent Order. If the One Hundred Thousand Dollar (\$100,000) penalty is not received within the prescribed deadline, it shall constitute grounds for further disciplinary action concerning the permits of Eckerd, and an administrative proceeding will be convened. The remaining Four Hundred Thirty-Seven Thousand dollars (\$437,000) of the penalty shall be paid to the Board within thirty (30) days from the date of entry of this Consent Order unless satisfactory documentation is submitted to the Board that the Electronic Reference System as submitted to the Committee is in place and fully operating in all 113 Eckerd pharmacies. If said documentation is received as stipulated, the Four Hundred Thirty-Seven Thousand Dollars (\$437,000) remaining penalty shall be waived. If said satisfactory documentation is not received as stipulated, the remaining Four Hundred Thirty-Seven Thousand Dollars (\$437,000) shall be due immediately and an administrative proceeding will be convened to determine if further disciplinary action should be taken for Eckerd's failure to effectively implement the Electronic Reference System.

4. The Board reserves the right to conduct further proceedings with respect to the status of the Eckerd pharmacy permits upon receipt of any additional allegations of violations.

Pursuant to § 9-6.14:14 of the Code of Virginia, the signed original of this Consent Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public release, inspection and copying upon request.

FOR THE BOARD:


William T. Walker, Chairman

ENTERED: August 19, 1997

SEEN AND AGREED TO:

Robert W. Hannan
Robert W. Hannan, Vice Chairman
Eckerd Corporation

STATE OF VA
CITY/COUNTY OF Henrico

Subscribed and sworn to before me, a Notary Public in and for the city/county of Henrico, this 19 day of August, 1997, by Robert W. Hannan, Vice Chairman, Eckerd Corporation. My commission expires the 31 day of December, 1997.

Mary Sostain
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Consent Order was ~~mailed~~ ^{hand delivered} to Robert W. Hannan, Vice Chairman, Eckerd Corporation, at 8333 Bryan Dairy Road, Largo, Florida 33777 on this 19th day of August, 1997.

Cathy M. Reiniers-Day
Cathy M. Reiniers-Day
Deputy Executive Director
Board of Pharmacy

CVS STORES BOUGHT BY ECKERD ON JUNE 22, 1997

| Previous Revco Permit Number 0201 | Current Eckerd Store Number | Date Revco Permit Received | Date Application from Eckerd for Permit Received | # Days Operated Prior to Board Receiving Completed Application |
|---|--------------------------------|-------------------------------|--|---|
| 002100 | 8236 | June 25 | June 25 | 3 days |
| 003287 | 8237 | June 25 | June 25 | 3 days |
| 002255 | 8238 | June 25 | June 25 | 3 days |
| 002919 | 8239 | June 25 | June 25 | 3 days |
| 000876 | 8240 | June 25 | June 25 | 3 days |
| 001074 | 8241 | June 25 | June 25 | 3 days |
| 002519 | 8242 | June 25 | June 25 | 3 days |
| 002649 | 8243 | June 25 | June 25 | 3 days |
| 003155 | 8244 | June 25 | June 25 | 3 days |
| 002507 | 8245 | June 25 | June 25 | 3 days |
| 002363 | 8246 | June 25 | June 25 | 3 days |
| 003313 | 8247 | June 25 | June 25 | 3 days |
| 001648 | 8248 | June 25 | June 25 | 3 days |
| 003221 | 8249 | June 25 | June 25 | 3 days |
| 000883 | 8260 | July 14 | July 14 | 22 days |
| 001636 | 8261 | July 7 | July 7 | 15 days |
| 002018 | 8262 | June 25 | June 25 | 3 days |
| 002674 | 8263 | June 25 | June 25 | 3 days |
| 002923 | 8264 | June 25 | June 25 | 3 days |
| 000891 | 8265 | July 7 | July 7 | 15 days |
| 000875 | 8266 | July 7 | July 7 | 15 days |
| 003303 | 8267 | July 7 | July 7 | 15 days |
| 001945 | 8268 | July 7 | July 7 | 15 days |
| 002656 | 8269 | June 25 | June 25 | 3 days |
| 002294 | 8270 | June 25 | June 25 | 3 days |
| 002945 | 8271 | June 25 | June 25 | 3 days |
| 002925 | 8272 | June 25 | June 25 | 3 days |
| 002926 | 8273 | June 25 | June 25 | 3 days |
| 002927 | 8274 | June 25 | June 25 | 3 days |
| 001490 | 8275 | June 25 | June 25 | 3 days |
| 001465 | 8276 | June 25 | June 25 | 3 days |
| 002096 | 8277 | June 25 | June 25 | 3 days |
| 003246 | 8278 | June 25 | June 25 | 3 days |
| 001544 | 8279 | June 25 | June 25 | 3 days |
| 002233 | 8280 | June 25 | June 25 | 3 days |
| 001281 | 8281 | June 25 | June 25 | 3 days |
| 000882 | 8282 | June 25 | June 25 | 3 days |

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|--------|------|---------|---------|---------|
| 003342 | 8283 | June 25 | June 25 | 3 days |
| 002040 | 8284 | June 25 | June 25 | 3 days |
| 002602 | 8285 | June 25 | June 25 | 3 days |
| 002928 | 8286 | June 25 | June 25 | 3 days |
| 002210 | 8287 | June 25 | June 25 | 3 days |
| 000880 | 8288 | June 25 | June 25 | 3 days |
| 002239 | 8289 | June 25 | June 25 | 3 days |
| 001618 | 8290 | June 25 | June 25 | 3 days |
| 002003 | 8291 | June 25 | June 25 | 3 days |
| 001420 | 8292 | June 25 | June 25 | 3 days |
| 001104 | 8293 | June 25 | June 25 | 3 days |
| 001573 | 8294 | June 25 | June 25 | 3 days |
| 002208 | 8295 | June 25 | June 25 | 3 days |
| 002934 | 8296 | June 25 | June 25 | 3 days |
| 002935 | 8297 | June 25 | June 25 | 3 days |
| 002936 | 8298 | June 25 | June 25 | 3 days |
| 002937 | 8299 | June 25 | June 25 | 3 days |
| 002938 | 8302 | June 25 | June 25 | 3 days |
| 002939 | 8304 | June 25 | June 25 | 3 days |
| 002940 | 8305 | June 25 | June 25 | 3 days |
| 002941 | 8306 | June 25 | June 25 | 3 days |
| 002942 | 8307 | June 25 | June 25 | 3 days |
| 002943 | 8308 | June 25 | June 25 | 3 days |
| 002944 | 8309 | June 25 | June 25 | 3 days |
| 001461 | 8330 | July 8 | July 16 | 24 days |
| 001605 | 8331 | June 25 | June 25 | 3 days |
| 001113 | 8332 | June 25 | June 25 | 3 days |
| 000955 | 8333 | June 25 | June 25 | 3 days |
| 001114 | 8334 | June 25 | June 25 | 3 days |
| 000951 | 8335 | June 14 | July 7 | 15 days |
| 001645 | 8336 | June 25 | June 25 | 3 days |
| 003372 | 8337 | June 25 | June 25 | 3 days |
| 003286 | 8338 | June 25 | June 25 | 3 days |
| 003280 | 8339 | June 25 | July 14 | 22 days |
| 002417 | 8340 | June 14 | July 7 | 15 days |
| 002528 | 8341 | June 25 | June 25 | 3 days |
| 002532 | 8342 | June 25 | June 25 | 3 days |
| 003254 | 8343 | June 25 | June 25 | 3 days |
| 000960 | 8344 | June 25 | June 25 | 3 days |
| 002337 | 8345 | June 25 | June 25 | 3 days |
| 003386 | 8346 | June 23 | July 16 | 24 days |
| 001351 | 8347 | June 25 | June 25 | 3 days |
| 000104 | 8348 | June 25 | June 25 | 3 days |
| 000874 | 8349 | June 25 | June 25 | 3 days |

| | | | | |
|--------|------|---------|---------|---------|
| 003264 | 8360 | June 25 | June 25 | 3 days |
| 003268 | 8361 | June 25 | June 25 | 3 days |
| 001639 | 8362 | June 25 | June 25 | 3 days |
| 001757 | 8363 | June 25 | June 25 | 3 days |
| 001775 | 8364 | June 25 | June 25 | 3 days |
| 001684 | 8365 | June 25 | June 25 | 3 days |
| 003300 | 8366 | June 25 | June 25 | 3 days |
| 002207 | 8367 | June 25 | June 25 | 3 days |
| 001172 | 8368 | July 14 | July 14 | 22 days |
| 001911 | 8369 | June 25 | June 25 | 3 days |
| 003243 | 8370 | June 25 | June 25 | 3 days |
| 003247 | 8371 | June 25 | June 25 | 3 days |
| 003235 | 8372 | July 7 | July 7 | 15 days |
| 001076 | 8373 | June 25 | June 25 | 3 days |
| 001155 | 8374 | June 4 | July 7 | 15 days |
| 001744 | 8375 | June 25 | June 25 | 3 days |
| 001502 | 8376 | June 25 | June 25 | 3 days |
| 000930 | 8377 | June 25 | June 25 | 3 days |
| 003149 | 8378 | June 25 | June 25 | 3 days |
| 003150 | 8379 | June 25 | June 25 | 3 days |
| 003245 | 8380 | July 16 | July 16 | 24 days |
| 001798 | 8381 | July 7 | July 7 | 15 days |
| 002612 | 8382 | June 25 | June 25 | 3 days |
| 002265 | 8383 | June 25 | June 25 | 3 days |
| 002412 | 8384 | July 16 | July 16 | 24 days |
| 003278 | 8385 | July 25 | July 25 | 3 days |
| 001802 | 8386 | June 25 | June 25 | 3 days |
| 002308 | 8387 | June 25 | June 25 | 3 days |
| 002456 | 8388 | June 25 | June 25 | 3 days |
| 002545 | 8389 | July 7 | July 7 | 15 days |
| 002513 | 8390 | June 25 | June 25 | 3 days |
| 002572 | 8391 | June 25 | June 25 | 3 days |